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INTERNATIONAL MORALITY

BY DAVID JAYNE HILL

WE have grown accustomed to the statement that international law, since it lacks an effective sanction, is in reality not law in any true and proper sense, but merely a code of ethics.

Both propositions might be easily controverted, for on the one hand it is not essential to the existence of law, taken in even the strictest sense, that it be universally obeyed or capable of uniform enforcement; and on the other, nothing is more certain than that international law, at its best estate, is far from being an embodiment of ethical conceptions.

Leaving for the moment the so-called "Law of Nations" to its fate—whatever that may be—we may at this time with great propriety ask ourselves the question, Is there a recognized international morality that can meet the requirements of an enlightened conscience?

To the man in the street it appears incongruous that a civilized State should demand of its citizens or subjects conformity to truth, honor, peacefulness, and a law-abiding spirit, and that the State itself—or the Government that speaks and acts in its name—should at the same time systematically and unblushingly resort to diplomatic equivocation, repudiate solemn engagements, exercise open violence upon non-combatants, and decline to recognize obligations of the most obvious character.

In defense of this divergence from the accepted standards of good morals, it is professed that an individual may voluntarily sacrifice himself, but a Government can in no case and in no degree sacrifice the interests of the State, toward which it stands in a fiduciary relation. These interests must, at any cost, be maintained and extended. The *lex altior*, therefore, before which all other laws, even the Moral Law, must give way, is the necessity of self-conservation. Under this rubric everything is justified. Treaties may be torn to shreds, foreign lands may be

overrun and devastated, their populations may be utterly destroyed and their possessions totally appropriated, in order that the State may expand and prosper.

What, then, is the State, that a Government, acting in its name, may enjoy these stupendous prerogatives of defying all law and acting according to its own good pleasure? If the State were a moral organism, an institution based on human rights, and designed to protect and preserve them, its functions would be determined mainly by ethical and juridical considerations. We should, in that case, conceive of the State as necessarily occupying a fixed place in the moral and legal order of ideas. That would imply both rights and duties, to be determined in every instance on the basis of recognized mutual obligation. The conception of the State would be altogether determined by the correlative moral conceptions from which its rights would spring, and by which they would also be limited. International morality would then be essentially involved in all international relations.

It requires only superficial observation, however, to convince ourselves that this is not actually so. Every one familiar with the literature of this subject knows that there are two antagonistic schools of thought regarding the application of moral principles to international affairs: (1) the *Realpolitiker*, who hold that international rights have no other basis than superior strength—in brief, that Might makes Right; and (2) the *Idealpolitiker*, who desire to place the entire international system upon the basis of strictly moral conceptions.

It is not desirable to cite specific examples of these conflicting doctrines, which would only lead to unprofitable controversy. Just as the protagonists of these two schools of thought are divided by their personal interests, temperaments, and general convictions, so would be those to whom such a discussion might be addressed. Conversion to either side would be doubtful; for, in the last analysis, the theory of the State will be grounded in the case of each individual upon his general conceptions of life, of human personality, and of the universe of which we form a part.

It is desirable, therefore, to be recalled from the field of dialectic to the field of fact. The important question is not, Would a moral conception of the State and of the relations between States work out beneficently for the well-being of mankind? but the more concrete and more definitely answerable question, Do Sovereign States at present practically recognize

in their outward relations the moral principles which they profess to respect and try to enforce in their internal affairs?

To this question there would, no doubt, be given a unanimous answer by well-informed men, and it would be a decided negative. The fact being admitted, the inquiry naturally arises, Why is this so?

The explanation is not to be sought in the realm of ethical theory. If the State is essentially an institution of human justice, there is no theoretical reason why States should not be perfectly just, and conform their conduct to the highest standards of morality. But the exceptional position of the State is not, in reality, an ethical question. This is sufficiently apparent from the fact that the origin of the distinction between public and private morality is not to be traced to any reasoned discussion about them. The distinction is simply an historical fact, the result of action, not of thought. The whole inquiry is, in truth, reduced to this, How has it happened that, while individuals are held responsible for their conduct, the State regards itself as irresponsible, and does not, as a State, even admit any knowledge of moral good or evil?

The explanation is to be sought in the origin of the State, which was not in the beginning an institution of justice, but an established agency of injustice. It is quite impossible in the light of modern anthropological inquiry to maintain that the State, as an institution, arose from a spontaneous social impulse seeking the security of individual rights. That has always been the work of revolutions, of revolt against a pre-existing order of things. If in a few instances the State has taken on the character of a moral organism, that has been owing to the resistance of the community to the forms of authority that originally existed for wholly different purposes. We may dismiss as purely fanciful the idea that half-naked savages, emerging from a state of nature, were at any time suddenly transformed into political philosophers, and, as a result of their deliberations, proceeded to evolve the notion of a "social contract," as imagined by Rousseau, voluntarily surrendering to freely chosen public powers the authority to command their obedience as a means of preserving their lives and property.

Quite different from this was the origin of Government. A contemporary authority of eminence writes:

The State completely in its genesis, essentially and almost completely during the first stages of its existence, is a social institution forced by a victorious group of men upon a defeated group, with the

sole purpose of imposing the dominion of the victorious group upon the vanquished, and securing itself against revolt from within and attacks from without.

The State originated in a war of conquest.

Uncertain as the data in support of this statement may be as regards prehistoric time, when the State first came into being, it is not only in harmony with what we know of those vestiges of that earlier condition afforded by the examination of primitive tribes still existing, but is overwhelmingly sustained by the recorded history of the peoples of antiquity, and indeed by universal history.

Everywhere we find some warlike tribe of wild men breaking through the boundaries of some less warlike people, settling down as nobility, and founding a State. . . . At all places on this planet where the development of tribes has attained a higher form, the State grew from the subjugation of one group by another. Its basic justification, its *raison d'être*, was and is the economic exploitation of those subjugated.

Tribute and enforced service in the interest of the conqueror have always been the dominant motives in the formation and expansion of States.

The two great dangers against which rulers have been obliged to guard have been revolt from within and attack from without. It is easy, therefore, to understand what have necessarily been the elemental aims of traditional statesmanship. To prevent revolt from within are needed obedience to law and in the population a type of morality useful to the State; namely, honesty in private dealing, submission to public authority, industry, security against the aggressions of neighbors in the community, and internal peace. To prevent attacks from without are needed strong military organization, unlimited power of command by the ruler, ungrudging contribution to the needs of the State, and unrestrained freedom on the part of the supreme powers to act as they pleased without responsibility to any one. The people must, therefore, be rigorously subject to law, and public authority must not be burdened by inconvenient outward obligations. Where power could be augmented, it was the business of the State to increase it by all available means. The individual, existing for the State, was in himself nothing. His property and his life must be wholly at the service of the State. To end all controversy on the subject, the will of the Prince must be law. No one should hold him responsible for his acts.

This is, undoubtedly, the traditional code of statecraft. Personal heroism, exemplary private virtue, and religious devotion have always served as ornaments to disguise and glorify absolute pretensions, but the precepts on which they are founded have never been permitted to restrain the entire freedom of Governments to work their will with other Governments, so far as their strength has permitted.

Having overpowered the richer but, for fighting purposes, weaker populations of conquered lands, the victors have invariably imposed their laws and tranquilly collected tribute. In the first exploitations, the invaders, like the bear that destroys the beehive in order to obtain the honey, exterminated the whole population and appropriated its possessions. It was, however, in time discovered that it would be a wiser policy to imitate the example of the beekeeper, who leaves in the hive enough honey for the bees to subsist upon through the winter, rather than that of the bear, who improvidently destroys the hive altogether. The more intelligent conquerors spared the lives of the vanquished, reduced them to slavery or serfdom, and lived on the surplus products of their industry. Regarded with gratitude for their clemency as saviors and protectors, the more merciful conquerors under this régime were able to inspire a sense of dependence and devotion on the part of their subjects, who readily adopted their speech, their customs, and their religion. Thus, as a result of the greater migrations and invasions, conducted upon this plan, were formed the feudal States, which, by the royal subjection of the higher vassals, in time became national monarchies, in which the king, to whom all were vassals and who was accountable to no overlord, stood wholly above the law, since his will was the source of law.

When such a condition of fact had been brought into existence, it was easy to invent a system of legal philosophy to give this order of things the appearance of rightful authority. This was the work of the lawyers, whose task was to impose the absolute dominion of the State upon the intelligence of the people as the wild horsemen had originally imposed it upon the vanquished by their armed incursions.

And who could doubt the reality of absolute and irresponsible sovereign authority when, as a fact, it really existed? Who could dare to question it, when he constantly felt the operation of it, and his very existence depended upon submission to it? And thus came into use as a legal term the magical word "sovereignty," defined by the keen jurist who invented

it as "a power absolute, indivisible, and inalienable," admitting no limitation, and bounded by no responsibility; or, to use his own exquisite expression, "*une puissance absolue et perpétuelle*."

Thus deftly a state of transient fact was translated into what claimed to be an eternal and incontrovertible principle. Henceforth, the State, in whatever form, was furnished with what seemed to be an indestructible philosophical foundation. The men of the period could not doubt the reality of irresponsible power.

Once established in legal phraseology, the name for it was too precious a possession ever to lose. When the people finally came into power, and free citizenship began to supersede hereditary royalty, the people were informed that this "sovereignty" was theirs; this glorious prerogative, this "absolute, indivisible, and inalienable power" *to do what they liked!* Who, falling heir to such a splendid heritage of license, would look to see if it were not, after all, only a tarnished relic of a vanished past?

And so "sovereignty" has come down to us, and its possession is claimed by us, in moments of need, as a charter of exemption from the Moral Law, affording us *carte blanche* to start out—if we only do it as a nation, and by a formal act of Government—upon any expedition of plunder and destruction that our "interests" may prompt us to undertake!

Do I speak with exaggeration, or in a spirit of triviality?

Let us open the authorities regarding the rights of belligerents. While international law has, by agreement, laid down certain rules regarding the "conduct of war," it is recognized that there exists no central authority that is able to enforce compliance with these agreements. But, as regards the right of a nation to declare war, for any reason, even for openly alleged plunder and conquest, there is no precept of restraint, and no recognized right of interference. Although the "right" to invade, subdue, and appropriate, without provocation, cannot be established as a right inherent in a sovereign State by any process of juridical reasoning, nevertheless it is a recognized prerogative which international law does not, and under existing conceptions of sovereignty cannot, forbid. One of the greatest authorities on this subject says:

Theoretically, international law ought to determine the causes for which war can be justly undertaken; in other words, it ought to mark out as plainly as municipal law what constitutes a wrong for which a remedy may be sought in law. It might also not unreasonably go

on to discourage the commission of wrongs by investing a State seeking redress with special rights, and by subjecting a wrong-doer to special disabilities.

But, in fact, it does nothing of the kind. International law accepts war, "independently of the justice of its origin, as a relation which the parties to it may set up if they choose," and which any nation may, if it chooses, impose upon another against its will. The law confines itself to nominally regulating "the effects of the relation."

That this last form of control is wholly illusory is evident from the fact that even such rules for the conduct of war as have been accepted and solemnly agreed to cannot be enforced by a non-belligerent co-signatory of the convention in which the agreement is made without itself going to war in order to execute that enforcement. Let us, then, frankly and honestly face the situation as it actually exists. So far as international law is concerned, Right is completely prostrate before the uplifted sword of Might. Another authority declares: "War is a contention between two or more States, through their armed forces, for the purpose of overpowering each other, and *imposing such conditions of peace as the victor pleases.*" So far as international law is concerned, any State may impose its absolute will upon another State, if its force is sufficient to enable it to do so!

And when we have said this there is nothing further left to be said regarding the present non-existence of international morality; for the one word, "war," as understood in actual practice, covers every crime that is conceivable to the human mind.

To say that the conscience as well as the reason of civilized men repudiates war as a method of settling international disputes is to surrender the whole system of the State inherited from the past. What is needed to bring the international situation into harmony with modern thought and feeling is a revision of the traditional and current conception of the State. The first step in the reconstruction of that conception is the repudiation of the idea that the power to take and destroy is the true basis of public authority. The next is the recognition of the truth that the State should not be regarded as an end in itself, but only as a means for the accomplishment of the true end—the safety, the free development, and the elevation of mankind.

DAVID JAYNE HILL.